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IN THE

# Supreme Court of the United States

October Term, 1958

RAYMOND WOOL,

*Petitioner,*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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*To the Supreme Court of the United States:*

Raymond Wool, the petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered the 11th day of August 1958.

### Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit has not been officially reported. A copy of this opinion is hereto annexed and marked Exhibit "A".

### Jurisdiction

The judgment of affirmance of the United States Court of Appeals for the Second Circuit which is sought to be

reviewed herein was made and entered on the 11th day of August 1953.

No motion for an order requesting a rehearing was made to the United States Court of Appeals for the Second Circuit. By order of Mr. Justice Harlan, the petitioner's time to file this petition was extended to and including October 10th, 1958.

The jurisdiction of this Court is invoked under Title 28, Section 1254 (1) U. S. C.

Certiorari is sought on the grounds, that the United States Court of Appeals for the Second Circuit has rendered a decision on important questions of Federal Law which are in conflict with the applicable decisions of this Court and is in conflict with decisions of the Court of Appeals of other circuits and requires clarification by this Court so as to make more definite and certain the Federal Law dealing with interpretations of the statutes or statute involved.

## Questions Presented for Review

The petitioner, Raymond Wool, was convicted in the United States District Court for the Southern District of New York for the crime of conspiracy in violation of Title 18, Section 371 U. S. C. upon a verdict of a jury. A copy of the indictment upon which petitioner was tried is hereto annexed and marked Exhibit "B" hereof. On May 15th, 1957, said judgment of conviction was duly entered and the petitioner was sentenced to a term of imprisonment of 18 months and was fined in the sum of $1,500.00. Thereafter said judgment of conviction was affirmed by the United States Court of Appeals for the Second Circuit on August 11th, 1958. The petitioner was continued on bail pending said appeal and is presently free on said bail.

The questions presented for review are as follows:

1. Whether the trial court substantially prejudiced the rights of the petitioner when it permitted the Government to prove multiple conspiracies under a count of the indictment which alleged a single conspiracy, in violation of the determination of this Court in *Kotteakos* v. *U. S.*, 328 U. S. 750.

2. Whether the rights of the petitioner were substantially prejudiced when the trial court denied the motion of the defendants to direct the Government to produce a statement which a witness for the Government had previously given to government agents, in direct violation of this Court's decision in *Jencks* v. *U. S.*, 353 U. S. 657.

3. Whether the trial court committed prejudicial error in denying the petitioner's motion for a directed judgment at the end of the Government's case and at the end of the entire case in contradiction to the decision rendered in the case of *Ong Way Jong* v. *U. S.*, 245 F. 2d 392.

## The Statutes Involved

Title 18, United States Code.

"Section 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not

exceed the maximum punishment proved for such misdemeanor."

Title 18, U. S. C.

"Sec. 3500. Demands for production of statements and reports of witnesses.

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then

direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term 'statement', as used in subsections (b), (c) and (d) of this section in relation to any witness called by the United States means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which

is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement."

## CONCISE STATEMENT OF THE CASE

### The Government's Case

At the opening of the trial, the Government and the attorneys for the respective defendants, entered into a Stipulation which was then read into the record. The Stipulation indicated that there were three transactions in which the defendant Raymond Wool, was involved with various other defendants. The Quartermaster Corps awarded three contracts to Bonita Originals bearing contract numbers QM-28153, QM-28155, and QM-28102 (R. 71). These contracts, for the sake of clarity, will be referred to as the Bonita Contracts. At the time the contracts were awarded, they were handled by various other officers of the Quartermaster Corps. However, after September 12th, 1952, the defendant Raymond Wool, became the Successor Contracting Officer and was assigned the Bonita contracts for administration until they were completed.

On June 27th, 1952, R. & J. Garments was awarded a portion of the contracts referred to above, by a Captain Walker of the Quartermaster Corps (R. 72) and some time after September 12th, 1952, Captain Raymond Wool became the Successor Contracting Officer as to the portion handled by R. & J. Garments. Again for the sake of clarity, we will refer to this transaction as the R. & J. Garments contract.

A third transaction that involved the defendant Raymond Wool, will be referred to as the White Hat contract (R. 73).

The Government and defense counsel agreed that Captain Raymond Wool was a Contracting Officer from Sep-

tember 12th, 1952 until October 13th, 1953 (R. 89) at ASTAPA.

The record is completely devoid of any proof or testimony that the defendant Raymond Wool did anything improper in reference to the Bonita contracts. However, the Government's contention has been that Raymond Wool took a bribe in order to compel R. & J. Garments to assign its contract to Bonita (R. 544) and that he received a bribe of $5,000.00 in reference to the White Hat contract (R. 608, 612, 613).

**The Government's Witnesses**

The Government called to the witness stand, Thomas F. Rooney. He was called as an expert in the Procurement Division, who testified as to the functions of the various departments in the Government in purchasing supplies for Armed Services. His testimony indicated that a Contracting Officer is assigned in order to set the wheels in motion for the purchase of various items required by the Armed Services of the United States Government (R. 175, 179 and 273). Invitations to bid are sent out to various known manufacturers who are listed with the Government, to submit a bid on a particular item that they can manufacture. The manufacturer is supplied with a special envelope in which he seals his bid and mails to the mailing-room of the Quartermaster Corps at the time when it was doing its own purchasing, or to ASTAPA when it came into being. These sealed bids are received by a special mail room where the officer in charge of said mail-room places the sealed envelopes in a vault. The Contracting Officer sees the bids for the first time when the bids are opened in a room that is open to the public and in the presence of various officers and clerks and thereafter the bids are sent to a section known as Cost and Price Analysis. They analyze the bids to determine which is in fact the lowest bid and make their recommendations

to the Contracting Officer. In addition to analyzing the bids themselves, this section had accountants who specialized in evaluating the financial structure of a proposed bidder so as to determine whether the bidder was financially capable of completing the contract.

The next witness that was called by the Government was Melvin Carlin (R. 312, 313) who testified as an accountant for Bonita. He was present at a conversation where the defendants Rubin and Ades met with the witness Levy. The essence of his testimony was that Ades and Levy were doing business as a co-partnership under the firm name of Bonita Originals and that some time between April 15th and June 15th of 1952, Rubin proposed to the partners that he knew people at the Quartermaster Corps and that he would be able to obtain Government contracts for them to manufacture various items and that he would need certain moneys for expenses to return favors that might be extended to him at the Quartermaster Corps. The partners agreed to go along and on June 13th, 1952, a check was issued for $1,000.00 to Levy for which there was no entry in the books and the explanation was that Rubin took this money for expenses incurred at the Quartermaster Corps (R. 318). At this point, it should be noted that Captain Raymond Wool came into ASTAPA in September, 1952, some three months after this transaction.

The next witness was Mr. Leon M. Levy. His testimony described the meetings between Mr. Ades, Mr. Rubin, Mr. Carlin and himself, at which there were discussions in reference to Mr. Rubin's activities at the Quartermaster Corps. He indicated in his testimony that Mr. Rubin said he had connections at Quartermaster Corps and that he would require 5 or 7% of the contract in order to entertain and give gifts to people who helped him at the Quartermaster Corps (R. 412), and that he would receive a third of the profits reaped from the contract. He further testified that he kept Arabic notes of the various amounts

that Mr. Rubin took to give to certain personnel at the Quartermaster Corps (R. 439). He further testified that amongst these items, was an item for $200.00 to pay a doctor bill for services rendered to Captain Wool and that this payment was made because Captain Wool was helping Rubin get more work for Bonita. More specifically, Levy testified that Rubin told him that Captain Wool and the co-defendant Hort, were "squeezing" R. & J. Garments, in order to compel them to assign the unfinished portion of their contract to Bonita (R. 504, R. 544, R. 560-564). He further testified that Mrs. Hort told him that she and Wool worked hard to get R. & J. Garments to assign its contract to Bonita (R. 570).

Levy further testified that Rubin told him that in reference to the White Hat contract, Harry Lev gave Mrs. Wool $5,000.00.

The next witness that dealt with Captain Wool was Dr. Franklin. Dr. Franklin testified that he rendered medical services to Captain Wool and that his bill came to $265.00 (R. 1145). He further testified that he had no recollection of sending the bill to Captain Wool, nor did he have any recollection of the circumstances surrounding the sending of a bill, but that he was Mr. Rubin's family physician and that he took care of Mr. Rubin and various members of Mr. Rubin's family (R. 1147, 1148).

In order to tie in Captain Wool and the defendant Lev, on the White Hat contract, the Government produced John R. Nagy, who produced the records of the Hotel Biltmore, which indicated that Lev checked into the hotel on June 29th, 1953 and checked out on July 3rd, 1953 (R. 1194).

Another witness was Porreca, a co-defendant in the indictment, who pleaded guilty before trial and who testified that Rubin told him "Ray is one of the boys. What are you worried about?" (R. 1244).

The Government also produced a witness who testified that Lev withdrew $8,000,00 on June 26th, 1953 in Chicago (R. 1414).

Another witness that was called in reference to the White Hat contract was James T. Welsh, Jr., who testified that he was a Real Estate salesman and that about the end of March, 1953, Mrs. Wool was seeking to purchase a home (R. 1418). That in March of that year she paid $1,700,00 in April, $400.00, and the balance of $5,900.00 on August 1st at the closing of title (R. 1420, 1421, 1423).

Then the Government attorney introduced excerpts of testimony taken of Wool before a Senate hearing where he testified that he borrowed a total of $9,000,00 from Patsy Lucliano, and that he signed a note for him at the beginning of 1953 for $5,000.00 (R. 1483-1486). This was done over objection of counsel. Thereafter Patsy Lucliano was called to the witness stand by the Government who testified that he never had loaned that much money to Captain Wool, but there had been a series of loans of which he kept no record (R. 1492). On cross-examination he admitted being a race-track habitue, and that he was accustomed to winning and losing hundreds of dollars a day at the race-track (R. 1496).

## Other Witnesses

The defendant did not call any witnesses nor did he take the stand and testify in his own behalf. However, certain witnesses were examined by the other defendants. At this point it becomes material to advert to the testimony that the Government adduced in order to prove Wool's participation in the conspiracy. In the Government's opening address, the Government attorney stated that he will prove that Patsy induced Wool to enter [illegible]

Harry Lev gave Mrs. Wool $5,000.00 so that he would be awarded the White Hat Contract (R. 42) and that Wool would grant deviations improperly to Harry Lev (R. 43). There was also an indication in the opening address that advance information was given to Lev by Wool and Hort so that he could underbid any other bidders. In a discussion that took place between defense counsel and the court, apparently the Government attorney withdrew from the position that Wool had any knowledge of what was contained in the sealed bids before they were opened in accordance with the regulations of the agency (R. 2652). Col. Zott was called to the stand by one of the other defendants who testified that he was in charge of the Inspection Department and that based on the pre-award survey, he would definitely have to recommend that the White Hat contract be awarded to Lev (R. 2663, R. 2664). In fact, the documents indicate that he did recommend the award to be made to Lev. He further testified that although the Contracting Officer did not have to take his recommendation, as a practical matter, he did (R. 2666). Col. Zott further pointed out that the procurement order for the white hats arrived at ASTAPA on April 8th, 1953, at 10:05 A. M. (R. 2711 Government's Exhibit 11B).

On the question of deviations granted to Lev, again Col. Zott's testimony indicated that nothing improper was done by Captain Wool. Lev sought a deviation whereby he would not have to "overpack" and would use the overseas [illegible] instead. Col. Zott indicated that in the Army, [illegible] never used overpacking but always packed, but that the Navy did use overpacking.

[illegible] witness that was called by one of the defendants was [illegible] Washington who was one of the principals of H & J Garments. He testified on behalf of how he came to get a Government contract that was awarded to H & J Garments. He testified that [illegible] (R. 3503, R. 3504) [illegible] as follows: He had been [illegible]

ture of various types of hats and had been awarded numerous contracts by various Contracting Officers in the Quartermaster Corps. There came a time when he bid against Bonita Originals on a contract and that Bonita Originals outbid him by approximately four cents per hat, and that Bonita Originals was awarded a portion of the contract and he was awarded the balance. At the time that the award was granted, he was having difficulties with meeting his schedules for the manufacturing of other hats pursuant to contracts that were awarded before the one in question. Therefore, his company decided that they would emphasize production on the older contracts first and go back to finish the last contract last. At this point, they had completed about 8 or 10 percent of the work. In February of 1953, several members of ASTAPA visited his plant; Mr. Zucker and Captain Martin, together with Captain Wool and Mrs. Hort. Captain Martin and Mr. Zucker were interested in the two older contracts. Captain Wool and Mrs. Hort were interested in the more recent contract. The purpose of the visit as described by Mr. Waldman was to reach some working arrangement as to meeting production schedules on the three contracts involved. After discussing the problem with his partners, they came to the conclusion that they couldn't possibly complete the last contract within any reasonable time, but that they could avoid a further default on the first two contracts if they could rid themselves of the third contract (R. 2559, R. 2560).

He then testified that he went to the Public Information Files in order to find out what companies were producing these caps for the Government and for what price, so that he could arrange subcontracting the third contract without having to pay a premium for doing so. He also considered the logic of the proposition that if he could make arrangements with a subcontractor who was known to the Government and was satisfactory to the Government, that he could obtain the approval of the Contracting

Officer to make such an assignment. At the Public Information Files he found that Bonita Originals was the logical choice for the sub-contracting of this work. Mr. Waldman then described how he sought out Bonita through Mr. Rubin whom he had met from time to time at bid openings at the Quartermaster Corps, and started negotiations with him. When he had reached an agreement with Mr. Rubin, he then approached Captain Raymond Wool as the Contracting Officer and Mrs. Hort for permission to sub-contract to Bonita Originals. Mr. Waldman was then asked directly whether he had been "squeezed" into a position to sub-contract to Bonita Originals and his answer was in the negative (R. 3573, R. 3574).

## Basis of Federal Jurisdiction in the Court of First Instance

The basis of Federal Jurisdiction in the Court of first instance was that the crime charged was in violation of a Federal Statute, to wit: 18 U. S. C. §371.

## Reasons Relied on for the Allowance of the Writ of Certiorari

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### POINT I

**The Trial Court committed prejudicial error by permitting the Government to prove several conspiracies under a count of the indictment that alleged a single conspiracy.**

Under the first count of the indictment, it is alleged that "from on or about January 1st, 1951 and continuing up to and including the date of filing of this indictment" (March 22, 1956) the defendants, including Raymond Wool con-

spired with each other to defraud the United States Government in the administration and procurement of Government contracts.

The proof presented at the trial indicates that there were at least three separate and distinct conspiracies. The first conspiracy deals with contracts that were awarded to Bonita Originals by Quartermaster Corps. (R. 71); the second alleged conspiracy deals with the assignment made by R. & J. Garments to Bonita, and the third conspiracy deals with the White Hat contract.

The three conspiracies involve entirely different personnel as well as different organizations.

The first alleged conspiracy deals with a situation where the Government witness testified that the defendant, Rubin, met with the defendant, Ades, and the Government witness Levy at a time when Ades & Levy were partners conducting business under the name of Bonita Originals. It is alleged that the defendant, Rubin, proposed that he be accepted into the partnership on the basis that he had influence and contacts at Quartermaster Corps and could obtain contracts through his contacts. The defendant, Wool, was not assigned to Quartermaster Corps nor was there any testimony presented that he had in any fashion participated in the three contracts originally obtained by Rubin from Quartermaster Corps. The persons involved in this transaction were, Rubin, Ades, Major Farnell, David Pollack, Mella Hort and Leon Levy.

As to this first conspiracy there was testimony that David Pollack received $500.00 in cash; Major Farnell received $1,000.00 and that Mella Hort received several hundred dollars.

The second conspiracy dealt with an assignment of a contract from R. & J. Garments to Bonita Originals. The testimony in regard to this transaction deals with the defendants, Ades, Rubin, Hort and Wool and the Government witness Leon Levy. As to this transaction it was

alleged that Wool had a medical bill paid by Bonita for his effort in helping Bonita obtain the assignment of a Government contract from R. & J. Garments.

The third conspiracy involved the White Hat contract and dealt with Harry Levy, Marvin Rubin, Maurice Ades, Joseph Porecca, Raymond Wool and Melba Hort.

Each of these transactions were separate and distinct from the other and dealt with different people except that Marvin Rubin and Maurice Ades are referred to in all of the transactions.

Such lumping together of conspiracies was condemned by the United States Supreme Court in *Kotteakos v. U. S.*, 328 U. S. 750, where the court held that it was improper to charge one conspiracy and proceed to prove multiple conspiracies merely because there was a common thread among them. The court pointed out the hazard of having a jury follow the proceedings and examine clearly the guilt or innocence of each of the defendants when confronted with a mass of transactions dealing with an assortment of conspiracies. Again and again, defense counsel in the instant case pointed out the hazards of having the proof of one conspiracy spilling over in various directions on various defendants, whether they were or were not involved in a specific conspiracy.

A further inflation of the confusion that was created by lumping the conspiracies together appears in an incident that took place during the course of the trial beginning with page 482 of the record. Levy had been testifying that Rubin told him to withdraw cash checks and to put the cash aside in a safe so that it would be available for gifts and entertainment to take care of various persons at Oppenheimer Hotels. As each such check was produced, objection was taken by defense counsel for Wool and the trial court sustained the objection. When Exhibit 41 was introduced in evidence by the Government to show that a check for $5000 was

cashed for this purpose (R. 489), the defendant Wool raised the same objection. This time, however, the court overruled the objection and said nothing about taking the exhibit subject to connection. Then we find at page 496 of the record, that the $350.00 check that was objected to previously, was part of a fund that totalled $600.00 and was distributed amongst Major Farnell, Pollack and Hort. As long as these exhibits were being accepted subject to connection, and the jury was advised that it was accepted subject to connection, we can assume that up to that point the court was in agreement with counsel that Wool was in no way connected with the first conspiracy. However, when the $350.00 check was accepted in evidence over objection of defense counsel, the jury had the right to assume that this check was tied in with Wool. The fact that at a later point the Government showed through its own witness where the money was supposed to have gone and that Wool was not a participant, was insufficient to wipe out the wrong impression that the jury got as to Wool's participation in the first conspiracy. This could only have occurred because the Government was permitted to prove a hodge-podge of conspiracies under the cloak of proving one conspiracy.

The Court of Appeals in the instant case recognized the problem that exists in distinguishing between single and multiple conspiracy situations.

It is respectfully submitted that the Court of Appeals has not helped in solving the problem. In its decision the Court of Appeals for the Second Circuit states at page 31 hereof, "Here, although from Lev's vantage point the Bonita transaction was completely separate from the White Hat Transaction, from the viewpoint of the other appellants the conspiracy was a single one to defraud the Government in matters of war contracts. Thus as to Rubin, Ades and Wool, who were involved in both transactions, there is, properly speaking, no variance."

If we are dealing with a conspiracy to defraud the Government in matters of war contracts, then logically speaking, every contract in which Ades and Rubin were interested would be part and parcel of one conspiracy in which different co-conspirators joined or abandoned from time to time. Such reasoning negates the statement that there were two separate transactions. Obviously, the defendant Wool had nothing to do with the contracts that were originally obtained by Bonita Originals any more than the defendant Lev.

It is respectfully submitted that this Court should define single and multiple conspiracies, so that the lower courts can be guided thereby.

## POINT II

**The rights of the petitioner were substantially prejudiced when the Trial Court denied the motion of the defendants to direct the Government to produce a statement which a witness for the Government had previously given to Government agents.**

The Court of Appeals for the Second Circuit in the instant case stated as follows, page 34 hereof: "Since the decision in Jencks v. United States, 353 U. S. 657, we know that the trial judge was in error in refusing the order on the ground that the defendants had not established inconsistencies between the statement and the witness' testimony." The decision then proceeds to state that the trial court's error was rendered harmless.

The reference is being made to a demand that was made by defense counsel for a statement of the witness Carlin. Carlin was called to the witness stand at the very inception of the trial. His testimony dealt in the main with a meeting that was held at the office of Bonita Originals wherein Levy, Ades, Rubin and Carlin were the sole per-

sons present. His testimony dealt with the presentation of a plan made by the defendant, Rubin, whereby he offered to obtain government contracts through his associations and contacts at the Quartermaster Corps and represented that he would require certain sums of money in order to induce government personnel to treat him favorably.

Carlin's testimony presented the basic picture for future dealings in the alleged conspiracy. The details, however, of various transactions that took place as a result of this meeting was testified to by the witness Levy. The Court of Appeals in reviewing the instant case refers to Levy's testimony as "terribly devastating testimony." The witness Levy followed the witness Carlin to the witness stand. Therefore when defense counsel made a motion for an order directing the Government to supply the defense with the written record of Carlin's interview by government officers and that motion was denied on the grounds that the defendant has failed to prove prior inconsistent statements, this became the law of the case and defense counsel were bound thereby. Similar motions would have been made in reference to Levy's testimony as well as other witnesses if it were not for the trial court's ruling on the application for Carlin's statement. So that even if we were to agree with the Court of Appeals that at a new trial, defense counsel would not be entitled to examine a summary made of Carlin's statement, the trial court's error seriously prejudiced the defense as to applications for statements that would be made as to witnesses following Carlin to the witness stand.

The petitioner herein respectfully contends that even under the Statute referred to in the opinion of the Court of Appeals, 18 U. S. C. Section 3500 (e)(1) (2), the defense would be entitled to the summary. The section reads that the witness' statement must be recorded "contemporaneously" and this has been interpreted by the

Court of Appeals to mean "simultaneously". It is respectfully submitted that there is nothing in the *Jencks* Decision nor in the Statute to indicate how soon a statement must be recorded after given by the witness. It is necessary to have a Supreme Court ruling on this issue so that the courts below may be guided thereby.

## POINT III

**The rights of the Petitioner were substantially prejudiced by the Trial Court's refusal to direct judgment for the Petitioner both at the end of the Government's case and at the end of the entire case.**

It is respectfully submitted that the Government relied very heavily upon the testimony of the witness Levy to connect the defendant Raymond Wool with any conspiracy. Levy testified that the defendant Rubin told him and others that he had connections at Quartermaster Corps who would help him obtain Government contracts (R. 412). Levy again testified that he issued a check to Dr. Franklin on the representation made by Mr. Rubin that Captain Wool was helping their firm (R. 543, 544). In fact, everything that Levy testified to as to what took place at Quartermaster Corps or at ASTAPA, which succeeded Quartermaster Corps, is summarized in Levy's cross-examination at page 671 of the Record.

> "Q. About the bribing of Government officials; did you ever make a complaint to anybody about that? A. I never did make a complaint to anybody about this because I cannot prove these things, only what Mr. Rubin telling me."

All of Mr. Levy's testimony dealing with his Arabic notes are based on statements made to him by Rubin (R. 1016, 1017).

As to each of the contracts in which the Government contends Captain Wool participated as a co-conspirator, there is only the testimony of Levy that Rubin told him that Captain Wool accepted moneys or favors for these contracts.

In reference to the R. & J. Garments assignment, it was Rubin, according to Levy's testimony, who stated that Captain Wool's doctor bills should be paid by Bonita so that R. & J. would be "squeezed" into a position to assign the contract to Bonita (R. 544, 543).

Again in reference to the White Hat contract, Levy testified that Rubin told him that Lev had given Mrs. Wool $5,000.00 for assisting Lev in obtaining the White Hat contract (R. 611, 612). At another point, Levy testified that Mrs. Hort told him how she and Captain Wool worked hard to get R. & J. Garments to assign its contracts to Bonita (R. 570).

The court's attention is drawn to the fact that in every one of these conversations, Captain Wool was not present.

It has been a well-established rule of law that before the declarations of co-conspirators can be received in evidence against one charged with participation in a conspiracy, it must be shown by independent evidence that the conspiracy existed and that the accused was made a party to it at the time the declarations were made. *Nibbelink* v. *U. S.*, 66 F. 2nd 178, 179.

> "* * * A defendant's connection with a conspiracy cannot be established by the extra-judicial declarations of a co-conspirator, made out of the presence of the defendant. There must be proof aliunde of the existence of the conspiracy, and of the defendant's connection with it before such statements become admissible as against a defendant not present when they were made." Montford v. U. S., C. A. 1952, 200 F. 2d 759, 760. To the same effect, see Fowler v. U. S., C. A. 1957, 242 F. 2d 860.

It should be pointed out that the petitioner herein does not at this point argue that there was insufficient proof of a conspiracy; he does argue that his complicity with the conspiracy was not proved sufficiently to warrant having the case go to the jury.

The Government has argued that the circumstantial evidence presented against Captain Wool was sufficient to connect him up with the conspiracy and that once he is so connected with the conspiracy all statements, made by co-conspirators can be used against him.

The petitioner does not argue with the law but does argue that the tests created by the various decisions have not been met. What circumstantial evidence does the Government argue connects the defendant Raymond Wool with the conspiracy?

1. Captain Raymond Wool's name appears on the documents approving the assignment of contract from R. & J. Garments to Bonita.

2. Captain Raymond Wool was the Successor Contracting Officer on the Bonita contracts.

3. Captain Raymond Wool knew and associated with Rubin.

4. Bonita paid Captain Wool's medical bill in the sum of $265.00.

5. Captain Wool and other officers appeared at the premises of R. & J. Garments in reference to their Government contracts.

6. Captain Wool was the Contracting Officer who was assigned the White Hat contract.

7. Captain Wool signed the documents awarding the White Hat contract to Lev.

8. Captain Wool signed documents in reference to deviations granted to Harry Lev.

9. Captain Wool bought a home for which cash was paid.

10. Captain Wool, in a sworn statement to the Senate, said he signed a note for various moneys borrowed from Luciano; Luciano denies receiving the note and denies lending large sums of moneys to Captain Wool, but admits lending small sums of moneys from time to time to Captain Wool.

This collection of circumstantial evidence falls in line with *Shannabarger* v. *U. S.*, 99 F. 2d 957, where the Court held at page 961 of the opinion:

> "It is a settled rule of law that 'In conspiracy cases, the unlawful combination, confederacy and agreement between two or more persons, that is, the conspiracy itself, is the gist of the action, and is the corpus delicti charged.' The agreement must, therefore be established before a conviction can be sustained. Tingle v. U. S., 8 Cir., 38 F. 2d 573, 575. The agreement, however, is a fact which, like most other disputed facts, may be proven by circumstantial evidence. Where the Government relies upon circumstantial evidence to establish the conspiracy, the circumstances must be such as to warrant the jury in finding that the conspirators had some unity of purpose, some common design and undertaking, some meeting of minds in an unlawful arrangement and the doing of some overt act to affect its object. See Marx v. U. S., 8 Cir., 86 F. 2d 245, 250, and cases there cited. Further, the

> circumstances relied upon must be not only consistent with the guilt of defendants, but must be inconsistent with their innocence."

Before we apply the tests required to the circumstantial evidence presented, we must also bear in mind the admonition of the United States Supreme Court in the case of *Direct Sales Co.* v. *U. S.*, 319 U. S. 703, which held that a conspiracy is not made out by piling an inference on an inference.

In examining each item of circumstantial evidence that has been presented in order to tie in Captain Wool with a conspiracy, it falls far short of meeting the tests required by the cases cited above.

The record, both by way of testimony and documentary proof, is replete with a series of acts on the part of Wool that is just as consistent with innocence as with guilt. As a Captain in the Armed Services of the United States, Wool was assigned to ASTAPA. As such an officer, he was assigned the duty of being a Contracting Officer; as a Contracting Officer, it was his duty to award contracts to the lowest bidder as recommended by other agencies. The Government does not deny that in each instance where Captain Wool signed a document as a Contracting Officer or Successor Contracting Officer, he followed to the letter, the recommendations of the various agencies whose recommendations he was duty-bound to follow.

When R. & J. Garments was delinquent in its schedules and commitments under various Government contracts, it was his duty to find out what could be done about the delinquencies and what steps should be taken to get the contracts completed in accordance with its terms. When he went to visit R. & J. Garments, he did not go in secret, but went along with other officers and members of the same office. The persons who went on that visit were, like himself, interested in protecting the contractual rights of the

United States Government. The other officers were interested in two older contracts and he was interested in a more recent contract. The only shred of evidence that makes it appear that Captain Wool had a sinister motive for the visit is Levy's hearsay testimony of what Rubin told him the purpose was for the visit.

The fact that Rubin and Captain Wool were closely associated where Captain Wool entertained Rubin and Rubin entertained Captain Wool and even went a step further in suggesting to Captain Wool that he avail himself of Rubin's personal physician, follows in line with the Court's opinion as stated in *Ong Way Jong* v. *U. S.*, C. A. 1957, 245 F. 2d, 392 at page 394.

> "No evidence has been adduced which definitely proves that Ong was here engaged in any criminal activity. No one has directly testified to such a connection or any circumstance from which such an accessoryship could be legally inferred. Guilt by association would be the only basis. Ong was constantly with Wee. Wee sold narcotics. Therefore, Ong must have supplied the heroin. This is a classic non sequitur."

So in the instant case, because there was proof presented that Rubin was engaged in a conspiracy with Levy and others and since there was a close association between Rubin and Wool, we are asked to assume that Wool participated in the conspiracy. The classic *non sequitur!* See also *U. S.* v. *Di Re*, 332 U. S. 581; *U. S.* v. *Moloney*, C. A. 1952, 200 F. 2d 344.

Another circumstance that the Government claims ties Wool in with the conspiracy is the purchase of his home for cash.

Obviously the purchase of a home in and of itself is an innocent act. The Government contends that it is proof

of the fact that Wool received $5,000.00 from Harry Lev. This item is allegedly tied in, in the following fashion; Levy testified that Rubin told him that some time towards the end of June of 1953, Harry Lev met with Rubin, Captain Wool and Mrs. Wool, at which time Harry Lev gave Mrs. Wool $5,000.00 as part payment for helping Harry Lev get the White Hat contract. To prove this transaction, the Government presented testimony that Lev withdrew $8,000.00 on June 26th, 1953 (R. 1414) and that Lev checked into the Hotel Biltmore on June 29th, 1953 (R. 119[illegible]). There was a Government witness, Welsh, who testified on the Government's behalf that in March of 1953, Mrs. Wool signed a binder on a house and paid $1,700.00 cash (R. 1421). That in April, she paid an additional $400.00 cash, at which time contract was signed, and that in August of 1953, she paid $5,900.00 in cash on the closing of title (R. 1420). In connection with these items, it should be pointed out that Government's Exhibit 11B was a procurement order for white hats which arrived at ASTAPA on April 8th, 1953 at 10:05 (R. 2711). This procurement order was then assigned by Wool's superiors to a Contracting Officer. Such a Contracting Officer could be Captain Wool or any of several others.

We must, therefore, reason that Captain Wool or Mrs. Wool had a crystal ball in March of 1953 whereby they could prophesy that a procurement order would come in on April 8th; that Captain Wool would be assigned as Contracting Officer; that Harry Lev would be interested in obtaining such a contract; that the section of Cost and Price Analysis and the section of Inspection would approve Harry Lev as the lowest responsible bidder. If Captain Wool had the ability to foresee all of these items, then he could go out and contract for the purchase of a home based on income from a bribe. It is respectfully submitted that this is the wildest kind of conjecture and guessing that a jury is asked to indulge in.

The consciousness of guilt theory has its place in the law provided there is substantial proof that conflicting statements were made by the defendant. Certainly it was never intended to apply where a conflict in statement is testified to by an irresponsible witness. The witness, Luciano, agreed that he did make loans to the defendant, Wool, but denied that he made them in the size in which Wool claimed before the Senate. To convict a man on the testimony of a Luciano which only partly contradicts the defendant's statement to the Senate would give rise to a very serious miscarriage of justice. Especially is this true since the defendant did not take the witness stand and the conflicting statement is attributed to him under different circumstances and in an entirely different forum from the courts. As was held in *Bell* v. *U. S.*, C. C. A. 1924, 2 F. 2d 543, "Proof of the overt acts alone would not warrant a conviction for conspiracy. That would require not only proof of the overt acts charged, or one of them but proof of the unlawful agreement. * * * " And to go a step further, there must be proof, circumstantial or direct, or both, that the person charged had knowledge of the existence of the conspiracy and with that knowledge intentionally did some act or thing to further carry it on. *Duke* v. *U. S.*, C. A. 1956, 233 F. 2d 897.

In the case at bar, the Government sought to prove various overt acts committed by the defendant and asked the jury to draw the inference from these acts that he knew of the conspiracy and was a party to the conspiracy. Can it be denied that the Government relied upon Levy's hearsay testimony to tie in Wool with the conspiracy?

We therefore come to this conclusion that from the overt acts we must draw the inference that Wool committed these acts in furtherance of a conspiracy and from that inference we must draw the further inference that he participated in the conspiracy knowingly. It has been

pointed out in *U. S.* v. *Falcone*, 311 U. S. 205, that the mere fact that one does acts in furtherance of a conspiracy is not proof that he knew of the conspiracy or that he furthered the conspiracy knowingly. See also *Duke* v. *U. S.*, C. A. 1956, 233 F. 2d 897.

The various courts of the United States have repeatedly held that if the evidence in a criminal case as a whole is as consistent with innocence as with guilt, a conviction should not be sustained and that unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused. *Tinsley* v. *U. S.*, 43 F. 2d 890 and cases cited.

As was said in *Ong Way Jong* v. *U. S.*, 245 F. 2d 392, 395:

> "The excellent trial judge made the mistake of considering a mass of evidence which was only admissible against Wee."

To paraphrase, the excellent trial judge made the mistake of considering a mass of evidence which was only admissible against Rubin.

## CONCLUSION

**The petition for certiorari should be granted and this Court in the exercise of its powers should order the judgment of conviction herein reversed.**

Respectfully submitted,

ALBERT H. TREIMAN
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261 Broadway
New York 7, New York

**Exhibit "A"**

OPINION

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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No. 283—October Term, 1957.

(Argued April 29, 1958 Decided August 11, 1958.)

Docket No. 24809

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

HARRY LEV, MARVIN RUBIN, MAURICE ADES and RAYMOND WOOL,

*Defendants-Appellants.*

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Before:

CLARK, *Chief Judge,*
and HINCKS and STEWART, *Circuit Judges.*

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Appeal from the United States District Court for the Southern District of New York, Irving R. Kaufman, *Judge.*

Harry Lev, Marvin Rubin, Maurice Ades, and Raymond Wool appeal from their convictions of conspiracy to defraud the United States, 18 U. S. C. §371, and Rubin also appeals from his conviction of bribery, 18 U. S. C. §201. Affirmed.

ARTHUR H. CHRISTY, Chief Asst. U. S. Atty., S. D. N. Y., New York City (Paul W. Williams, U. S. Atty., and Fioravante G. Perrotta and Joseph T. Altier, Asst. U. S. Attys., New York City, on the brief), *for appellee.*

MILTON S. GOULD, of Gallop, Climenko & Gould, New York City (George Trosk, of Gallop, Climenko & Gould, New York City, on the brief), *for defendant-appellant Harry Lev.*

JOHN T. SULLIVAN, New York City, *for defendant-appellant Marvin Rubin.*

THOMAS J. SHORT, of Dougherty, Ryan & Mahoney, New York City, *for defendant-appellant Maurice Ades.*

ALBERT H. TREIMAN, New York City, *for defendant-appellant Raymond Wool.*

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CLARK, *Chief Judge*:

Harry Lev, Marvin Rubin, Maurice Ades, and Raymond Wool appeal from a verdict and judgment of conviction for conspiracy to defraud the Government in violation of 18 U. S. C. §371. Rubin also appeals from a conviction for bribery in violation of 18 U. S. C. §201. The defendants were indicted for a single conspiracy to defraud the United States in the administration and procurement of Government contracts. Alleged errors involve, principally a claimed variance between a charge of a single conspiracy and proof of two, and a failure to order a statement from a Government witness delivered to the defense for use in cross-examination. Ades and Wool also claim an insufficiency of the evidence, as does Rubin with respect to the bribery charge.

The proof adduced at the trial below tended to show overt acts between February 1952 and about August 1953 involving the procurement and administration of two contracts awarded to Bonita Originals, Inc., for the manufacture of Army garrison caps, and overt acts in the period commencing in April 1953 and continuing on into 1954 involving the procurement and administration of a contract awarded to Spencer Manufacturing Corporation for the manufacture of white hats for the Navy. During the former period Ades was the president and owner of 50 per cent of the stock of Bonita, Rubin was employed by Bonita on a profit-sharing basis to deal with Government officials on the garrison cap transaction, and Wool, an Army officer in the Quartermaster Corps, was assigned the Bonita contracts for administration until they were completed. Lev was not involved in either the procurement or the administration of the Bonita contracts. But Lev, Ades, and Rubin were all interested in Spencer Manufacturing Corporation and involved in the procurement and administration of the white hat contract. Wool was appointed a Contracting Officer of the Armed Services Textile and Apparel Procurement Agency (ASTAPA) prior to the award of the white hat contract and participated in both the award and the administration of that contract. On this proof Judge Kaufman, for the defendants' benefit, charged the jury that in fact two separate conspiracies were involved—the Bonita conspiracy and the white hat conspiracy—although he expressed doubts as to whether it was improper to characterize the conspiracy as a single one.

Defendants urge that a fatal variance occurred between the indictment and the proof concerning the number of conspiracies, and that this error was compounded by confusion on this point in the court's charge to the jury. A claim of variance is not unusual in a conspiracy case, *United States* v. *Rosenberg*, 2 Cir., 150 F. 2d 788, 793, certiorari denied 326 U. S. 752, and the courts have not evolved clear lines

for distinguishing single and multiple conspiracy situations. Cf. *Blumenthal* v. *United States*, 332 U. S. 539; *Berger* v. *United States*, 295 U. S. 78; *Kotteakos* v. *United States*, 328 U. S. 750; *United States* v. *Cohen*, 2 Cir., 145 F. 2d 82, certiorari denied *Cohen* v. *United States*, 323 U. S. 799; *Monroe* v. *United States*, D. C. Cir., 234 F. 2d 49, certiorari denied 352 U. S. 873; *Canella* v. *United States*, 9 Cir., 157 F. 2d 470. Here, although from Lev's vantage point the Bonita transaction was completely separate from the white hat transaction, from the viewpoint of the other appellants the conspiracy was a single one to defraud the Government in matters of war contracts. Thus as to Rubin, Ades, and Wool, who were involved in both transactions, there is, properly speaking, no variance. See *Canella* v. *United States*, *supra*, 9 Cir., 157 F. 2d 470; *cf. Blumenthal* v. *United States*, *supra*, 332 U. S. 539.

As Lev was involved only in the latter transaction, a more serious question of variance does arise as to him. In *Berger* v. *United States*, *supra*, 295 U. S. 78, 82, and *Kotteakos* v. *United States*, *supra*, 328 U. S. 750, 757, the Supreme Court set out the applicable rule in these circumstances: "The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to 'effect the substantial rights' of the accused." In this Circuit the test applied has been stated as whether the conspiracies ultimately proved might have been joined in a single indictment and whether the trial was conducted so as to protect the rights of defendants who are not common to all conspiracies. *United States* v. *Cohen*, *supra*, 2 Cir., 145 F. 2d 82, 89. Although Lev claims that the confusion inherent in the indictment was compounded by the court's instructions, a thorough reading of the charge shows that Judge Kaufman was scrupulous in protecting Lev's rights. In fact it is apparent that the jury was able to differentiate between the evidence relevant to defendants involved in only one of the con-

spiracies, for it acquitted defendant Pollack, who was alleged to be involved solely in the Bonita affair. It follows that the variance here was not prejudicial and was at most harmless error.

Ades and Wool claim that the evidence linking them to the conspiracy was insufficient to justify admitting in evidence against them the admissions of other conspirators. Two witnesses for the prosecution gave important evidence involving particularly statements by Rubin defining and particularizing the use of funds to pay for entertainment of and gifts to the Government inspectors. These were Carlin, accountant for Bonita, and Levy, secretary-treasurer and co-owner of Bonita. Levy's testimony particularly went into details of funds drawn by him for uses which Rubin's directions and explanations to him showed were improper, definitely bringing the others, notably Ades and Wool, into the conspiracy. Hence we must consider the independent evidence supporting the inference of participation in the conspiracy and justifying the receipt of this testimony against them.

The independent evidence linking Ades to the illegal plot shows that he was present at a meeting with Rubin in the spring of 1952 where Rubin allegedly stated that he would need 5 to 7 per cent of the contract price in order to entertain Government personnel. Ades then went to Puerto Rico, where he managed the factory which manufactured the caps and hats supplied the Government. There is testimony that, while running the plant in Puerto Rico, he induced a Government inspector, Ienni, to live at his apartment rent free; that he brought another Government employee named Schlesinger to Puerto Rico secretly under an alias; that he attempted to bribe another inspector, Watkins; that he wrote a letter attempting to have Forcillo, a Government inspector, removed because he was too tough; and that, even before the white hat contract was awarded, he was bragging that they would receive it.

As to Captain Wool, the proof was that he went to visit Rubin's office several times; that as the officer supervising the procurement he granted valuable contractual deviations whenever they were requested, both in the Bonita contract and later to Lev; that he had several meetings with Lev before the opening of the bid on the white hat contract; and that as contracting officer he approved Lev's bid, although the pre-award survey showed that Lev had no machinery at all in Puerto Rico to manufacture the hats. There was testimony that in May or June 1953 Wool came to the Bonita office and took a topcoat and again, some children's dresses. There was further evidence from Rubin's doctor, Dr. Franklin, who testified that Rubin introduced Wool to him and that he treated Wool on nine separate office visits and rendered a bill for $265, which was paid by a check from the Bonita Corporation for $285 (thus including $20 for Rubin himself). Later when Rubin came to testify he said that Wool's affliction was deep-seated and of long standing, which no Army doctor had been able to reach, but which Dr. Franklin proceeded to cure by this course of treatment. This evidence stands uncontradicted on the record, and Wool (who did not testify) offered no satisfactory explanation of Bonita's making this payment for him. There was also considerable circumstantial evidence tending to show, when coupled with testimony as to statements made by an alleged coconspirator, that a month after the white hat contract was awarded Lev advanced him $5,000, which he used to complete payments on the purchase of a house. Later in testifying to a Senate committee investigating these frauds he claimed to have borrowed money and given a note to one Luciano, who denied this in testifying below. This testimony was presented by the Government to show consciousness of guilt. Thus the evidence offered as to both Ades and Wool presents amply sufficient groundwork for the admission of testimony of statements by coconspirators and in particular for Levy's terribly devastating testimony, which, when believed by the jury, left no question of guilt.

Defendants Lev and Rubin assert that the trial court committed reversible error in refusing to order the Government to produce for their inspection a statement made by Government witness Carlin to agents of a Senate investigating committee. Since the decision in *Jencks* v. *United States*, 353 U. S. 657, we know that the trial judge was in error in refusing the order on the ground that the defendants had not established inconsistencies between the statement and the witness' testimony. But before a new trial is to be ordered, we must see if the statement is in any event discoverable. Although the statement is not a part of the lower court record, the prosecutor—who did not have it at the trial—has procured from the Senate committee and presented to us in a sealed envelope a verified copy of a Senate investigator's summary of an interview with Carlin. An additional affidavit establishes that this summary is the only written record made of Carlin's interview, and that it was written following the interview and is not a substantially verbatim record of Carlin's statement. We have examined the summary, and internal evidence from it tends also to bear this out.

While defendants may perhaps have been given a right to inspect a statement of this nature by the *Jencks* decision, *supra*, 353 U. S. 657, 668,[1] the recent codification of discovery in this situation allows a defendant to examine only the following:

> "(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

[1] Here the Court said: "We now hold that the petitioner was entitled to an order directing the Government to produce for inspection all reports of Matusow and Ford in its possession, written and, when orally made, as recorded by the F. B. I., touching the events and activities as to which they testified at the trial." While not specified, it seems inferable that the F. B. I. recording of the reports made orally was contemporaneous with the making of the oral statements.

> "(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement." 18 U. S. C. §3500(e)(1)(2).

As this statute will apply on a new trial of any of these defendants, and as under it discovery of the summary cannot be required, the trial court's error is rendered harmless, *United States* v. *Miller*, 2 Cir., 248 F. 2d 163, certiorari denied *Miller* v. *United States*, 355 U. S. 905.

There remains to be discussed Rubin's contention that there was insufficient evidence for the jury to have convicted him of bribery. We think the evidence quite sufficient. There was proof that Chief Inspector Porreca, whose duty it was to assign inspectors, upon a request had removed Forcillo from Puerto Rico and replaced him with a more lenient man. Thereafter Rubin sent Porreca a deep freeze, for which Bonita paid. Porreca later received some meat to put in the freezer. He testified that he never paid for any of this, nor was he ever asked to pay for it. This was enough evidence of violation of the bribery statute, 18 U. S. C. §201. The defense efforts to show that nothing Porreca did actually defrauded the Government are irrelevant as the statute shows.

This important trial discloses a sad and sordid picture of Government agents yielding to rather cheap temptation, some willingly, some only under pressure. But there is another side to the story, of inspectors who stood out at all times against such debauchery of their obligations and who were transferred to other activities for their pains. It is to be hoped that they received no permanent setbacks in their careers, but eventually were accorded that proper respect which they so richly merited.

Convictions affirmed.

## Exhibit "B"

INDICTMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C-149-324

UNITED STATES OF AMERICA,

—v—

HARRY LEV, MARVIN RUBIN, MAURICE ADES, JOSEPH G. PORRECA, ERIC C. FARNELL, RAYMOND WOOL, MELLA HORT, DAVID POLLACK and GEORGE A. EARNSHAW,

Defendants.

The Grand Jury charges:

1. From on or about January 1, 1951, and continuing up to and including the date of filing of this indictment in the Southern District of New York, Harry Lev, Marvin Rubin, Maurice Ades, Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack and George A. Earnshaw, the defendants, did unlawfully, wilfully and knowing combine, conspire, confederate and agree together, and with each other and with divers other persons to the Grand Jurors unknown, to defraud the United States in the exercise of its governmental functions of administration and procurement of government contracts free from unlawful impairment, obstruction, partiality, improper influence, dishonesty, fraud and corruption, and

in its right and interest in the conscientious, honest and faithful services, judgments, determinations and actions of the defendants Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack and George A. Earnshaw, and duly appointed employees of agencies of the United States, to wit, the New York Quartermaster Procurement Agency (hereinafter referred to as the NYQMPA), and the Armed Services Textile and Apparel Procurement Agency (hereinafter referred to as the ASTAPA), free from corruption, partiality, improper influence, dishonesty, bias, hope of unlawful reward and fraud.

2. During the course of the conspiracy defendant Joseph G. Porreca was a Clothing Inspector and Chief Inspector of the Textile Fabrication Branch of the NYQMPA.

3. During the course of the conspiracy defendant Eric C. Farnell was a Contracting Officer in the NYQMPA, and Chief of the Clothing Purchasing Branch of the ASTAPA.

4. During the course of the conspiracy defendant Raymond Wool was Chief of the Headwear, Knitwear, Rainwear Section, Clothing Purchasing Branch, Purchasing Division of the ASTAPA.

5. During the course of the conspiracy defendant Mella Hort was a Procurement Clerk in the NYQMPA, and a Contract Administration Clerk in the ASTAPA.

6. During the course of the conspiracy defendant David Pollack was a Business Accountant in the NYQMPA and in the ASTAPA.

7. During the course of the conspiracy defendant George A. Earnshaw was a Purchasing Agent for the NYQMPA and the ASTAPA.

8. It was part of the conspiracy that the defendants Harry Lev, Marvin Rubin and Maurice Ades would offer to give and give money and other things of value to officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA, for the purpose of inducing them to corruptly disclose confidential information prior to the awarding of government contracts, which information would enable said defendants to be low bidders on such contracts.

9. It was further a part of the conspiracy that the defendants Harry Lev, Marvin Rubin and Maurice Ades would offer to give and give money and other things of value to officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA for the purpose of inducing them to corruptly grant deviations in the specifications of government contracts, which deviations might result in loss of moneys to the United States.

10. It was further a part of the conspiracy that the defendants would offer to give and give money and other things of value to clothing inspectors employed by the NYQMPA for the purpose of influencing their decisions and actions on matters pending before the said clothing inspectors in their official capacities as inspectors of clothing and apparel for the United States Army, Navy and Air Force.

11. It was further a part of the conspiracy that defendants Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack, George A. Earnshaw, and other co-conspirators to the Grand Jurors unknown, in their capacities as officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA would corruptly accept moneys, gratuities and other things of value with intent to have their decisions and actions influenced thereby on matters and contracts pend-

ing before them in their official capacities within the said agencies of the United States.

12. It was further a part of the conspiracy that the defendants and other co-conspirators to the Grand Jurors unknown, would at all times misrepresent, conceal and hide and cause to be misrepresented, concealed and hidden, the purposes of, and the acts done in furtherance of said conspiracy.

OVERT ACTS

The Grand Jury further charges that the defendants and co-conspirators to the Grand Jurors unknown, in furtherance of and for the purpose of carrying into execution said combination, conspiracy, confederation and agreement, did and performed the following and other overt acts, to wit:

1. In or about March 1952, in the Southern District of New York, defendant Marvin Rubin stated and represented to Leon Levy and defendant Maurice Ades that he had connections and influence with officers, employees and persons acting for and on behalf of the NYQMPA, and that he could obtain for the said Leon Levy and Maurice Ades, special advantages and preferential treatment in the awarding and administration of government contracts.

2. In or about May 1952, in Chicago, Illinois, defendant Harry Lev offered to pay $50 a week to Michael Weintraub when the said Michael Weintraub was then and there acting as an Inspector for and on behalf of the NYQMPA.

3. On or about June 13, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant Eric C. Farnell the sum of $1,000 in United States currency.

4. On or about August 27, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant David Pollack the sum of $500 in United States currency.

5. On or about December 24, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant Joseph G. Porreca a nine cubic foot deep freeze unit.

6. On or about October 14, 1952, in the Southern District of New York, defendants Marvin Rubin and Joseph G. Porreca caused Inspector William Ienni to be transferred to Mayaguez, Puerto Rico.

7. On or about December 22, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant George A. Earnshaw a quantity of whiskey of the approximate value of $17.55.

8. On or about May 12, 1953 in San Juan, Puerto Rico, defendants Harry Lev, Marvin Rubin and Maurice Ades held a meeting with Inspector Louis I. Alperstein.

9. On or about June 11, 1953, in the Southern District of New York, the defendant Marvin Rubin caused a check for $285 to be delivered to William D. Franklin in payment of medical expenses incurred by defendant Raymond Wool.

10. On or about August 12, 1953, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to Jerome Schlessinger, a plane ticket to Puerto Rico and the sum of $50 in United States currency.

(Title 18, United States Code, Section 371).

SECOND COUNT

The Grand Jury further charges:

On or about August 27, 1952, in the Southern District of New York, Marvin Rubin, defendant herein, promised, offered to give and gave the sum of $500 in United States currency to David Pollack, the said David Pollack being then and there an employee of and a person acting for and on behalf of an agency of the United States, to wit, the New York Quartermaster Procurement Agency, with intent to influence the decision and actions of the said David Pollack on matters at that time pending, and which might by law be brought before him in his official capacity as a Business Accountant in the New York Quartermaster Procurement Agency.

(Title 18, United States Code, Section 201).

THIRD COUNT

The Grand Jury further charges:

On or about December 24, 1952, in the Southern District of New York, Marvin Rubin, defendant herein, promised, offered to give and gave a nine cubic foot deep freeze unit to Joseph G. Porreca, the said Joseph G. Porreca being then and there an employee of and a person acting for and on behalf of an agency of the United States, to wit, the New York Quartermaster Procurement Agency, with intent to influence the decisions and actions of the said Joseph G. Porreca on matters at that time pending and which might by law be brought before him in his official capacity as a Clothing Inspector in the New York Quartermaster Procurement Agency.

(Title 18, United States Code, Section 201).

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Foreman

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PAUL W. WILLIAMS
United States Attorney